

BY ECF

October 3, 2019

**The Honorable Jesse M. Furman
United States District Court
Southern District of New York
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007**

Re: Usherson v. Bandshell Artist Management (19-cv-6368-JMF)

Dear Judge Furman,

Plaintiff Arthur Usherson (“Plaintiff” or “Usherson”) and defendant Bandshell Artist Management (“Bandshell”) jointly submit this letter in anticipation of the Initial Pretrial Conference scheduled for 3:15pm on October 10, 2019.

1. A Brief Statement of the Nature of the Action and Defenses

a. Plaintiff’s Statement:

Plaintiff is a professional photograph in the business of licensing his photographs for a fee. Plaintiff took a photograph of singer songwriter Leon Redbone. Defendant ran the photograph on its Facebook without permission of Plaintiff. Plaintiff asserts that Defendant’s use was willful.

b. Defendant’s Statement:

Bandshell states that it represents certain musicians, including David Bromberg, who became well-known in the 1960s and 70s as a guitar player and folk artist, alongside Bob Dylan and others. Bandshell administers David Bromberg’s Facebook page. When Bromberg’s friend and fellow musician, Leon Redbone died this year, Bandshell re-posted Redbone’s Facebook profile picture (which was an approximately 50-year old photograph of Redbone, Bromberg, and Dylan) on Bromberg’s Facebook page with a Rest in Peace message. The photo was used solely on a personal page as a tribute and had no indication that it belonged to anyone else. Bandshell only found out about Usherson’s claim when served with this lawsuit. The use was a fair use under copyright law, and at worst Bandshell’s actions were innocent and not willful. Furthermore, given the lack of copyright notice, it does not appear Usherson has rights to protect in the photograph. There are no damages, no profit was made through this non-commercial use of the photo, and Usherson has never licensed the photograph in question.

2. Statement of Venue

There is no dispute as to venue. Defendant resides in this District.

3. Existing Deadlines and Due Dates

The parties will be having a telephonic mediation on October 8, 2019. The mediation office never assigned a mediator thus the parties have agreed to have the mediation on this date.

4. Outstanding Motions

None.

5. Discovery

No Discovery has taken place of yet.

6. Settlement

The parties are having a mediation on October 8, 2019 to try to resolve the matter.

7. Facilitation of Settlement

The parties will continue discussing settlement during discovery.

8. Trial Length-

2-3 days

9. Summary Judgment-

Yes, the parties anticipate filing motions for summary judgment

10. No other issues.

Respectfully Submitted,
/s/Richard Liebowitz
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